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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 479

HILTON HOTELS (U.K.) LIMITED,
Petitioner.

—against—

JACK FRUMMER,
Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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The Petitioner, Hilton Hotels (U.K.) Limited, prays that a Writ of Certiorari issue to review (1) an order of the Court of Appeals of the State of New York, dated May 18, 1967, as amended, which affirmed an order of the Supreme Court of the State of New York, Appellate Division, Second Department, made on the 28th day of March, 1967; and (2) an order of the Court of Appeals made on the 7th day of July, 1967, to the extent that it denied a rehearing of the aforesaid appeal.

The Opinions Below

The opinion of the Court of Appeals of the State of New York has not yet been reported. The opinion and order and remittitur as amended are printed in the Appendix at pages 1a to 19a, *infra*.

The decision of the Court of Appeals of the State of New York denying a rehearing and directing amendment of the remittitur are printed in the Appendix at pages 20a to 21a, *infra*.

The opinion of the Supreme Court of the State of New York, County of Kings, has not been officially or unofficially reported, and its opinion is printed in the Appendix hereto at pages 27a to 28a, *infra*.

The memorandum decision of the Supreme Court, Appellate Division, Second Department, affirming the decision of the Supreme Court of the State of New York, County of Kings, has not been officially reported, but is reported in 269 N. Y. S. 2d 688, and its memorandum decision and order are printed in the Appendix hereto at pages 22a to 24a, *infra*.

Jurisdiction

The order of the Court of Appeals of the State of New York was entered on May 18, 1967 (Appendix, pages 17a-19a, *infra*) and the order of the Court of Appeals of the State of New York denying a rehearing and directing amendment of the remittitur was entered on July 7, 1967 (Appendix, pages 20a-21a, *infra*). The order of the Supreme Court, Appellate Division, Second Department was entered on March 28, 1966 (Appendix, pages 23a-24a, *infra*). The order of the Supreme Court of the State of New York, County of Kings was entered on July 26, 1965 (Appendix, pages 30a-31a, *infra*). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257.

The Question Presented

Does the order of the Court of Appeals holding that the New York Courts have *in personam* jurisdiction in a tort action for an alleged injury occurring in London, England against Hilton Hotels (U.K.) Ltd., an English corporation, whose sole business is the operation of a hotel in London, England, violate the due process clause of the 14th Amendment to the Constitution of the United States?

Statement

This is a personal injury action brought by Respondent to recover damages for injuries allegedly sustained by Respondent in a bathtub in the London Hilton Hotel, in London, England.

The London Hilton Hotel is operated by the Petitioner Hilton Hotels (U.K.) Limited, an English corporation which leases the Hotel from another, non-affiliated, English corporation.

At the time in question, the stock of Hilton Hotels (U.K.) Limited was owned by Hilton Hotels International, Inc., whose stock in turn was owned by Hilton Hotels Corporation (Record pages 69-70). Both of those corporations were also named and served as co-defendants in the action.

Respondent sought to commence the action against Petitioner, by serving process on its Secretary in London, England, on or about May 20, 1965.

Promptly after such purported service, Petitioner moved for an order pursuant to Civil Practice Law and Rules of the State of New York, Section 3211(a) 8, dismissing the complaint as to it, upon the ground that the Supreme Court of the State of New York did not have jurisdiction over the person of said Petitioner (Record, page 7-8). The lower Court denied the motion (Appendix, pages 30a-31a, *infra*).

The Appellate Division of the Supreme Court of the State of New York, affirmed the decision below without opinion (Record, page 89; 269 N. Y. S. 2d 688) but, granted leave to Petitioner to appeal to the Court of Appeals of the State of New York (Appendix, pages 25a-26a, *infra*).

The Court of Appeals of the State of New York affirmed the decision below by a four-to-three vote. The majority and dissenting opinions are printed in the Appendix hereto at pages 1a to 16a, *infra*.

In reaching its decision the Court of Appeals adverted to the Federal Constitutional question raised by Petitioners, that the contacts of Hilton Hotels (U.K.) Limited with State of New York were insufficient under the due process clause of the Fourteenth Amendment to the U. S. Constitution to justify the exercise of jurisdiction.

Further, any ambiguity in this regard was completely dispelled by the action of the Court of Appeals on July 7, 1967, in response to Petitioners' motion, directing the amendment of its remittitur by adding thereto the following (Appendix, pages 20a-21a, *infra*).

> "Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: Defendant British corporation contended that it was deprived of due process in violation of its rights under the Fourteenth Amendment of the Constitution of the United States. The Court of Appeals held that there was no violation of the defendant's constitional rights."

The facts are undisputed. Petitioner operates the London Hilton Hotel, in London, England. Its activities are directed solely and exclusively, and without any exception by the management of the London Hilton Hotel (Record, page 70). It has no employees in the State of New York; it has no office in the State of New York; it has no funds in the State of New York; it leases no property in the State of

New York; it never applied for authority to do business in the State of New York (Record, page 71). At the time of the alleged tort, Petitioner was a wholly-owned subsidiary of Hilton Hotels International, Inc., a Delaware corporation, whose principal place of business was in the State of New York which in turn was a wholly-owned subsidiary of Hilton Hotels Corporation, a Delaware corporation whose principal office and place of business was in Chicago, Illinois. A subsidiary of Hilton Hotels Corporation operated the Hilton Reservation Service which provided reservation services for the hotels operated by Hilton Hotels Corporation and its subsidiary companies and the hotel, operated by Hilton Hotels International, Inc. and its subsidiaries including Petitioner as well as for some 50 hotels operated by non-affiliated persons. Hilton Reservation Service maintained offices in many cities throughout the United States and overseas, including an office in New York. It had its own bank accounts, its own telephone listings and advertised its services, which consisted of informing persons desiring reservations at any hotels served by it whether or not rooms were available in such hotels at the requested times. Its confirmation of the availability of space in any hotel was based upon information and instructions provided for it by the hotel. Where on the basis of such information and instructions space was available, it confirmed that fact to the potential customer. The services performed for the hotels owned by Hilton affiliates were the same as those performed for non-affiliated hotels (Record, pages 7, 70-72).

Neither the complaint in the present case nor the affidavit of counsel in opposition to the motion to dismiss the complaint alleges that the plaintiff-respondent had any dealings with the Hilton Reservation Service in New York or elsewhere but merely alleges and asserts that the plaintiff became a guest and registered at the hotel known as the London Hilton Hotel in London, England.

Reasons for Granting the Writ

The 4-3 decision by the Court of Appeals of the State of New York in the present case would, if it were permitted to stand, represent an extremely important and far-reaching extension of the jurisdiction of state courts over foreign corporations. For the first time, to counsel's knowledge, a state court has asserted jurisdiction over an action for an alleged tort committed outside of the state and not arising from a transaction in the state against a foreign corporation whose only contact with the state is that a third party has been granted limited authority to enter into arrangements for the provision of services by the foreign corporation outside of the state. As indicated above, the respondent did not even allege that he entered into any arrangement with or through that third party and thus on the basis of the record it can only be concluded that his entire relationship with the foreign corporation took place in its foreign place of business.

It is a fact that the third party here, Hilton Reservation Service, was at the time an affiliate, three steps removed of petitioner Hilton Hotels (U.K.) Ltd., but it is equally the fact, that the authority and functions of Hilton Reservation Service vis-a-vis petitioner, were exactly the same as its authority and functions with respect to the fifty completely non-affiliated hotel operations which it serviced, i.e., the confirming of availabilities of accommodations on the basis of information supplied and instructions given by the client hotels. The decision, therefore, could bring all such non-affiliated hotels and, indeed, any hotel using any reservation service, under the jurisdiction of the courts of the state, even though such hotel had no other contact with the state and the acts giving rise to the action and the reservation transaction itself were wholly outside the state.

Nor, of course, would the decision be limited in its consequences to hotels or other enterprises in the travel field, numerous and important as these are. It would extend to

the entire range of manufacturers or suppliers of products or services which have continuing representative arrangements. For a single illustrative example, we may take the case of an English motorcar manufacturer. Such a manufacturer would typically have arrangements for offering its automobiles by dealers throughout the United States. Such dealers will normally be assured of the availability of a minimum number of automobiles so that they are in a position to confirm such availabilities to prospective customers, whether for delivery in the jurisdiction in question, or for direct delivery overseas. They normally advertise the automobiles for which they have such representation. It is difficult to see how, under the majority decision of the Court of Appeals, in this case, jurisdiction could be denied to any court in any state in which there is such a dealer, even over a cause of action for injuries sustained in England as a result of a defective part in an automobile bought in England through an English dealer. Indeed, such a result would appear to follow *a fortiorari* since in the present case there could not possibly have been any delivery of petitioner's hotel services in the state to anyone even by a third party.

It is unnecessary to multiply such examples since their multiplicity is manifest. It is equally manifest that if the decision were permitted to stand, it would be an understatement to say that it "heralds the eventual demise of all restrictions on the personal jurisdiction of the courts" contrary to the explicit injunction of this Court in *Hanson* v. *Denckla,* 357 U. S. 235 (1957) at page 251. In that case, the Court went on to say:

> "Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States."

The decision of the Court of Appeals erred in several vital respects. As Judge Breitel points out in his dissent,

the majority opinion, while purporting to recognize that the affiliation of petitioner with the Hilton Reservation Service is legally irrelevant, in view of the unchallenged complete separation of the internal affairs and management of these companies, yet appears to base its decision on what it terms "a valid inference as to the scope of the agency", based on such affiliation, without ever disclosing what that "valid inference" is or how it bears upon the issue. Its only statement as to the scope of the agency is made earlier in its opinion when attempting to distinguish its prior decision in *Miller* v. *Surf Properties*, 4 N. Y. 2d 475, states, "the Hilton Reservation Service both accepts and confirms reservations at the London Hilton". As Judge Breitel points out, however (Appendix page 9a).

> ". . . there is no support in the record for the assertion that the Hilton Reservation Service 'both accepts and confirms room reservations at the London Hilton'. As established by the brochure of the Reservation Service and the affidavit of the Vice-President of Hilton International, the Reservation Service only 'confirm(s) availabilities' at various hotels (not merely Hilton Hotels) 'based on forecasts supplied by the hotels'. As a matter of fact, the affidavits supplied by plaintiff do not contradict this assertion but only equivocate that the reservations 'are taken and culminated right here in New York City', whatever the word 'culminated' may mean in this context. The local activities of the Reservation Service, then, are similar to those of the agency in the *Miller* case. There, the 'Resort Service' would be 'notified by (a) hotel as to the availability of space'. Unless the hotel had informed the Service to the contrary, it would, in turn, inform inquiring customers that 'reservations are available' (4 N. Y. 2d at 479, *supra*)."

Even more significant and vital, however, is the majority opinion's failure to recognize the basic principle enunciated by this Court in *International Shoe Co.* v. *Washington,* 326 U. S. 310 (1945) despite its purported reliance on that decision. In that case, this Court, after discussing the prior cases, stated the controlling conditions as follows (See page 319):

> "It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. *St. Louis S. W. R. Co.* v. *Alexander, supra,* 228; *International Harvester Co.* v. *Kentucky, supra,* 587. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations. Cf. *Pennoyer* v. *Neff, supra; Minnesota Commercial Assn.* v. *Benn,* 261 U. S. 140.
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> "But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, *so far as those obligations arise out of or are connected with the activities within the state,* a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. Compare *International Harvester Co.* v. *Kentucky, supra,* with

Green v. *Chicago, B. & Q. R. Co., supra,* and *People's Tobacco Co.* v. *American Tobacco Co., supra.* Compare *Connecticut Mutual Co.* v. *Spratley, supra,* 619, 620 and *Commercial Mutual Co.* v. *Davis, supra,* with *Old Wayne Life Assn.* v. *McDonough, supra.* See 29 Columbia Law Review, 187-195" * (Emphasis supplied).

The principle set forth above was reaffirmed by this Court in *McGee* v. *International Life Ins. Co.,* 355 U. S. 220, and *Hanson* v. *Denckla, supra.* In the *McGee* case the California Court was held to have jurisdiction, the Court stating that, "It is sufficient for purposes of due process, that the suit was based on a contract which had substantial connection with that State" (Page 223). In the *Hanson* case, in which the Florida Court was held not to have jurisdiction, this Court stated, "The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee* v. *International Life Ins. Co.,* 355 U. S. 220, and the cases there cited."

In *Perkins* v. *Benquet Mining Co.,* 342 U. S. 437 (1951), decided exactly midway between *International Shoe Co.* v. *Washington, supra,* and *Hanson* v. *Denckla, supra,* the

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* See also *L. & N. R. Co.* v. *Chatters,* 279 U. S. 320 (1928), in which the Court in an opinion by Mr. Justice Stone stated at pages 324-325 as follows:

> "A foreign corporation is amenable to suit to enforce a personal liability if it is doing business within the jurisdiction in such manner and to such extent as to warrant the inference that it is present there. *Lafayette Insurance Co.* v. *French,* 18 How. 404; *Mutual Life Ins. Co.* v. *Spratley,* 172 U. S. 602; *St. Louis Southwestern Ry.* v. *Alexander,* 227 U. S. 218. Even when present and amenable to suit it may not, unless it has consented, *Pennsylvania Fire Ins. Co.* v. *Gold Issue Mining Co.,* 243 U. S. 93; *Smolik* v. *Phila. & Reading Coal Co.,* 222 Fed. 148, be sued on transitory causes of action arising elsewhere which are unconnected with any corporate action by it within the jurisdiction. *Old Wayne Mut. Life Ass'n* v. *McDonough,* 204 U. S. 8; *Simon* v. *Southern Ry. Co.,* 236 U. S. 115."

Court ignored the language quoted above from *International Shoe Co.* and purported to decide that under certain circumstances where the business done in the state is sufficiently substantial, a cause of action against a foreign corporation may be entertained where the cause of action did not arise from activities carried on in the state. Not only is this decision inconsistent with the later as well as the earlier opinions of the Court, but it is also thoroughly distinguishable on its facts. In the *Perkins* case, the defendant was a Philippine mining company owning and operating gold and silver mines in the Philippines. By reason of the war and Japanese occupation, the activities of the corporation in the Philippines were interrupted and the President of the corporation moved his office to Ohio where the corporation carried on "continuous and systematic corporate activities . . . consisting of Directors' meetings, business correspondence, banking, stock transfers, payment of salaries, purchasing of machinery, etc." The action was for enforcement of alleged corporate obligations to the plaintiff stockholder, being based on a claim for dividends and for damages arising from alleged failure of the corporation to issue stock certificates to which she was entitled.

Thus, despite some of the language contained in the opinion of Mr. Justice Burton, it would appear clear that the decision itself is thoroughly consistent with the principles enunciated by the Court in the preceding and subsequent opinions discussed above. The obligation sought to be enforced was a true corporate obligation as such and the *de facto* headquarters of the corporation were in the state in which the action was brought.

The present case presents the opposite extreme. The obligation which forms the basis of the action is the obligation to maintain a safe bathtub in a building in London. The defendant petitioner is a large, solvent and active corporation in England carrying on its only business, that of providing hotel facilities, in London. It carries on no activities, corporate or business, in the State of New

York. The problems of proof involved in the action relate to acts performed or unperformed by a whole range of personnel in London. As will be readily recognized, the types of tort actions arising out of the conduct of hotel operations such as slipping on staircases, falling into pools, having adverse reactions to food served, etc., all are peculiarly local phenomena, and the persons involved in the rendition of such services, or in performing normal maintenance activities and the like, are the persons whose testimony will most often be required. In addition, the ascertainment of the facts in such cases will in many instances be such as normally would cause a judge to direct a viewing of the actual scene of the alleged injury by the triers of the facts.

Finally, in the present case, not only the specific obligation involved in the action but also the relationship between petitioner and respondent was established in and only in London, and there was no relationship between respondent and petitioner or even any third person having any connection with petitioner in the State of New York. Under these circumstances, it is submitted that not only the controlling precedents but all general considerations of fairness, and principles of territorial jurisdiction make it imperative that this Court review the decision of the Court of Appeals in the instant case, particularly, as noted above, in view of the extremely far-reaching implications of the issues involved.

The decision below is not only, as has been demonstrated, contrary to the provisions of the Constitutional Law of this country, but it is equally contrary to the principles of private international law. Reference is made to the scholarly discussion of this aspect of the matter in the opinion of Judge Breitel (Appendix pages 6a-16a) on the basis of which he concludes that no country in the civilized world, even in the absence of a specific constitutional limitation such as is applicable to the individual states of the United States, asserts a jurisdiction as extensive as that sought to be

asserted here by the State of New York. As he concludes, the action of the State of New York, if permitted to stand, could easily lead to "reciprocal manipulation against American enterprises operating through subsidiaries or affiliates in other countries" (Appendix page 15a) and as stated earlier in the opinion, "These considerations are particularly important for a country engaged in world-wide trade and investment, often in the less developed countries of the world, because of the encouragement or discouragement to risk capital and the exposure to reciprocal treatment of jurisdictional bases in foreign countries" (Appendix page 7a).

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

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